



Tucson Electric Power

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Submitted via the Commission's Internet Comment Form Portal

June 16, 2022

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE, Washington, DC 20549-1090

RE: *File Number S7-10-22 – Proposed Rule on The Enhancement and Standardization of Climate-Related Disclosures for Investors (87 FR 21334, April 11, 2022)*

Dear Ms. Countryman:

Tucson Electric Power Company (TEP or the Company) respectfully submits these comments to the Securities and Exchange Commission (SEC or the Commission) regarding the *Proposed Rule; The Enhancement and Standardization of Climate-Related Disclosures for Investors 87 FR 21334 (April 11, 2022)* (Proposed Rule).

TEP is an electric utility located in Tucson, Arizona, serving approximately 438,000 customers. TEP's service territory covers 1,155 square miles and includes a population of over one million people in Pima County, as well as parts of Cochise County, Arizona. TEP's principal business operations include generating, transmitting, and distributing electricity to its retail customers. In addition to retail sales, TEP sells electricity, transmission, and ancillary services to other utilities, municipalities, and energy marketing companies on a wholesale basis. TEP is subject to rate regulation by the Arizona Corporation Commission (the ACC) and Federal Energy Regulatory Commission (FERC). The ACC has jurisdiction with respect to the rates of electric distribution companies in Arizona. The FERC regulates rates and services for electric transmission and wholesale power sales in interstate commerce.

Thank you for the opportunity to provide feedback on the Proposed Rule. TEP recognizes the significance of climate change. As an electric utility, we are creating and executing a strategy to remain leaders in the transition to a more sustainable, low-carbon economy. As a SEC registrant, TEP recognizes the significance of the Proposed Rule. We appreciate the Commission's efforts to increase the consistency, comparability, and reliability of climate-related disclosures. Providing decision-useful information to investors is paramount.

TEP is a member of the Edison Electric Institute (EEI), the association that represents all U.S. investor-owned electric companies. We concur with the EEI and American Gas Association (AGA) comment letter on the Proposed Rule submitted to the Commission and incorporate EEI and AGA's comments herein. TEP also reviewed the Electric Power Research Institute's (EPRI) technical comments on the Proposed Rule. We concur with EPRI's comment letter, as well.

TEP thanks the Commission for working to mitigate registrants' compliance burden and liability risk, as noted throughout the Proposed Rule. We respectfully offer comments on the following key aspects of the Proposed Rule: (1) compliance burden and liability risk; (2) the audited footnote requirement and materiality threshold; (3) the requirement to disclose climate-related targets and goals; and (4) the mandate to disclose Scope 3 greenhouse gas (GHG) emissions. In providing our comments and recommendations, we seek to balance the cost and risk to TEP and its customers with the benefits to its investors and other stakeholders.

1. REVISE THE PROPOSED RULE TO DECREASE COMPLIANCE BURDEN AND LIABILITY RISK

a. Inclusion of Climate Disclosures in Form 10-K Increases Compliance Costs Due to Accelerated Filing Deadlines and Internal Controls Associated with Financial Reporting

TEP is already required to annually report a majority of its Scope 1 GHG emissions to the U.S. Environmental Protection Agency (EPA). The deadline for GHG reporting to EPA is late in the first quarter, well after TEP files its Form 10-K. The Proposed Rule's requirement that emissions data be included in the Form 10-K would require a substantial acceleration of the gathering, processing and verification of that data and may necessitate that TEP prepare multiple sets of data. Further, if TEP reports "reasonable estimates" to the SEC under the Proposed Rule, such estimates may conflict with the data TEP later submits to EPA after it has more time for quality assurance efforts. This use of "reasonable estimates" may require TEP to provide revisions once the actual data has been verified. Such efforts would substantially add to the compliance burden and could effectively triple TEP's reporting requirements. Assuming this burden holds across the industry, the increase in such revisions will also require additional Commission resources.

In addition to the reporting obligations to EPA, TEP reports climate-related information and data (e.g., emissions and fuel use) to other federal and state regulatory agencies, such as the U.S. Energy Information Administration and the ACC. Further, TEP voluntarily discloses on the Company's website a majority of our material GHG emissions on EEI's industry-specific ESG reporting template each year. The ESG template was developed in collaboration with industry investors (and streamlines investor-useful information across two pages). These reports are either regulatory requirements that have enforcement and penalty consequences for noncompliance, or they are public-facing statements that undergo significant internal checks and have reputational consequences for reporting inaccurate or misleading information.

The additional time, effort and resources required to produce similar information to the SEC by filing deadlines with the internal controls required of financial reporting increases compliance efforts and costs. TEP submits to the Commission that such efforts outweigh any incremental benefit the Proposed Rule may provide above and beyond the value of the regulatory and voluntary reporting to which its investors and other stakeholders already have access.

It is important for the Commission to note that the Proposed Rule will also create costs and burdens for non-registrant entities, including non-registrant electric utilities that provide power to registrants. Such non-registrant electric utilities include privately held companies, public power entities and electric cooperatives with which TEP routinely transacts business. Under the Proposed Rule, registrants who are customers of these entities may require utility-specific energy emission information for their own reporting and might require verifiability of this information from non-registrant utility companies. As a result, these entities will also have new reporting and cost burdens.

The Proposed Rule may also further increase compliance costs. Because most SEC registrants are also electric utility customers, they will likely be required to request utility-specific energy emissions information from their electric utility to comply with the Proposed Rule and may also require verifiability of such information. This will create additional reporting burdens and timing pressures and further drive-up compliance costs for registrant and non-registrant electric utilities alike. Under this example, TEP is impacted both in its capacity as a registrant and as an electric utility to other registrants. This reporting obligation and the resultant timing pressures will similarly impact other privately held electric utilities, public power entities, or electrical cooperatives. Other examples of higher compliance costs include registrants who co-own facilities with other registrants and non-registrants. TEP co-owns several electric generation facilities with registrants and non-registrants and anticipates additional time and cost as those assets are incorporated into the Proposed Rule disclosures.

In addition to compliance costs, the Proposed Rule also increases registrants' liability and litigation risk. We recommend the Commission incorporate additional protections for registrants into the Proposed Rule to limit such risk and encourage thorough and thoughtful disclosure.

Maintaining affordable service is of the utmost importance to TEP. For the electric utility industry, the increased costs of compliance and additional exposure to litigation resulting from the Proposed Rule could ultimately lead to higher utility rates for customers. Arizona ranks 41st in the U.S. in per capita personal income in 2021 as reported by the Bureau of Economic Analysis.¹ Such higher rates have a disproportionate impact on disadvantaged communities, such as limited and fixed income customers.

¹ www.bea.gov/sites/default/files/2022-03/spi0322_0.pdf

b. Requirement that Climate Disclosures be Filed, Rather Than Furnished, Increases Litigation Risk

The requirement that climate-related disclosures under the Proposed Rule be “filed” rather than “furnished” will create increased litigation risks for registrants. This includes increased potential for spurious claims, including securities fraud, climate tort, violation of consumer protection laws, and “greenwashing.” This is particularly concerning to TEP given the diversity of its generation portfolio and the anticipated complexity of its continued transition from fossil fuels to cleaner, renewable resources. TEP’s plan to transition to a more sustainable energy portfolio is dependent on decisions of our regulator, the ACC, and is thus subject to change. To reduce this risk and foster transparent reporting, we recommend the Commission allow climate-related disclosures to be furnished and not subject to the same liability risk as Commission filings.

c. Safe Harbor Protection for Scope 3 Emissions is Not Sufficient

We are further concerned about the comprehensive amount and type of data required under the Proposed Rule. Although we agree with the Proposed Rule’s safe harbor protection for Scope 3 GHG emission disclosures, we do not feel the protection goes far enough given the scope and timing of required disclosures. To address this concern, we believe the safe harbor should be expanded to also include the Scope 1 and 2 GHG emissions disclosures required under the Proposed Rule. Without such expansion, the Proposed Rule again unreasonably creates the potential for additional liability given the inherent nature and complexity of the required disclosures.

d. Disclosure of Climate Goals and Targets Increases Liability Risk

Finally, we are concerned about the liability risk attached to the Proposed Rule requirement to disclose climate-related goals and targets. To the extent a registrant’s climate goals are referenced in its SEC filings, the disclosure of those goals and progress toward them needs to be afforded adequate protection against the risk of liability and litigation. As companies move toward a low carbon future, their climate goals may change and evolve, often due to forces outside of their control. In our case, TEP files an Integrated Resource Plan with the ACC that outlines our long-term plan to meet electric demand while transitioning to a more sustainable resource portfolio. The ACC acknowledges the Integrated Resource Plan if the regulator finds it to be reasonable and in the public interest. TEP then requests cost recovery from the ACC, including the cost of closure of fossil-based generation facilities, through retail rates and cost recovery mechanisms in periodic rate cases. To enable and encourage registrants to set ambitious climate goals while also accounting for the reality that progress toward those goals may not be linear, TEP feels it is imperative that the Proposed Rule also afford safe harbor protection for such disclosures.

2. REMOVE THE AUDITED FOOTNOTE REQUIREMENT AND REVISE THE MATERIALITY THRESHOLD

TEP requests the Commission revise the Proposed Rule to deem the mandated “climate-related metrics” good-faith estimates and move such estimates from the audited footnote requirement of Item 14-02 to the Regulation S-K disclosure requirements of Item 1500 *et seq.* Should the Commission maintain climate-related disclosures in Item 14-02 (under Regulation S-X), we urge the SEC return to the well-established legal precedent for determining “materiality” for climate-related disclosures², rather than mandate a specific percent impact.

As proposed, the Item 14-02 “climate-related metrics” will create more confusion and burden than value and clarity. Specifically, the Item 14-02 metrics (e.g., severe weather events, other natural conditions, and transition activities) will impact almost every line item of a utility registrant’s financial statements. The volume of information required under this proposal will undermine efforts to provide balanced and streamlined information. Further, the internal control and audit requirements will create an extraordinary compliance burden on registrants. In addition, many of the “climate-related metrics” are undefined, and the Proposed Rule does not provide actionable guidance. As EEI/AGA highlight in their letter, metrics such as “severe weather event” and “other natural conditions” are only defined by specific example and not by establishing actionable boundaries around the potential universe of such events and conditions.

Finally, the Item 14-02 requirement to separate revenues between climate-related and simply economic-related is subjective and will counteract the Commission’s goal of consistency and comparability. The same is true on the cost side. It is not always clear which costs are climate-related and which are attributable to transition or other activities. For example, TEP constructs, operates, and maintains physical utility assets to withstand severe weather. TEP also executes a robust vegetation management program to mitigate wildfires. It is not clear to what extent these costs should be categorized as general O&M or climate-related. The volume of information Item 14-02 will inadvertently require, as well as the variable interpretation of the climate-related metrics, warrants moving such disclosures (as good-faith estimates) to Item 1500 *et seq.*

² See The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21,351 (April 11, 2022) (“As defined by the Commission and consistent with Supreme Court precedent, a matter is material if there is a substantial likelihood that a reasonable investor would consider it important when determining whether to buy or sell securities or how to vote.” (Citing 17 CFR 240.12b-2 (definition of “material”), *Basic Inc. v. Levinson*, 485 U.S. 224, 231, 232, and 240 (1988) (holding that information is material if there is a substantial likelihood that a reasonable investor would consider the information important in deciding how to vote or make an investment decision; and quoting *TSC Industries, Inc. v. Northway, Inc.*, 426 U. S. 438, 449 (1977) to further explain that an omitted fact is material if there is “a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available.”))).

TEP submits that the Proposed Rule's requirement to disclose the impact of weather and transition activities if such amounts exceed 1% of the related line is inconsistent with SEC policy as reflected in the Commission's Staff Accounting Bulletin 99, Materiality, and elsewhere. Further, the 1% threshold will require reporting on immaterial metrics. This materiality threshold may also necessitate that processes that have previously been out-of-scope of the Sarbanes-Oxley Act of 2002 be brought in-scope to provide assurance that the financial data presented is materially correct. Finally, TEP is concerned about the need to design and operate effective controls that can identify immaterial impacts that aggregate to the 1% threshold. For these reasons, TEP recommends that the SEC return to the time-tested and well-established concept of "materiality," rather than mandate a separate bright line materiality threshold.

3. REVISE THE REQUIREMENT TO DISCLOSE TARGETS AND GOALS

Establishing and progressing toward climate-related goals and targets is a critical piece of the transition to a more sustainable, low-carbon economy. Climate-related goals/targets are complex and may be impacted by a number of variables. Some goals are ready for public consumption, while others warrant a longer internal horizon before release outside an organization. TEP urges the Commission to honor these inherent qualities of climate-related goals/targets and consider the following comments and recommendations.

The proposed disclosure requirements pertaining to targets/goals are overly broad in that they mandate disclosure of "any" climate targets and goals. Specifically, the Proposed Rule does not differentiate between a registrant's publicly disclosed goals and goals that are being developed internally. *See*, Proposed Rule Item 1506 (Targets and goals) and Item 1501 (Governance disclosure requirements pertaining to the oversight of targets, goals, and interim measures by the board of directors).

In light of the potential risk of liability and litigation associated with any required disclosure, the Proposed Rule may have the unintended consequence of discouraging registrants from developing climate goals and targets and may even encourage the withdrawal of already-developed goals and targets. Ambitious or aspirational climate-related goals may be seen as too risky by registrants (e.g., vulnerable to "greenwashing" claims). Likewise, developments and advancements required to realize a low carbon future may be diminished by less aspiring goals.

TEP, like many other companies, already voluntarily discloses its GHG emissions reduction and renewable energy goals. TEP regularly reports on progress toward goals outlined and submitted to other regulatory agencies, such as to the ACC through its Integrated Resource Planning process. Often, efforts to set goals are part of an extensive stakeholder process. As a utility, TEP's progress on climate goals is not linear, and the timeline can be impacted by our various regulators and the impacts of such actions on the reliability of TEP's system and the affordability to its customers, with year over year progress not able to tell the full story. As explained above, formally requiring disclosure of such goals under the Proposed Rule may have a chilling effect on such voluntary disclosure.

TEP requests the Commission only require disclosure of climate-related goals and targets that are material and appropriate for financial reporting. Furthermore, we recommend the Item 14-02 requirement to disclose the expenditures and costs related to meeting climate-related targets, commitments and goals be moved to Item 1500 and recommended for disclosure as good-faith estimates. If the Commission retains the Proposed Rule's requirement to disclose climate goals and targets, we reiterate the recommendation to expand the safe harbor protection over such goals and targets.

4. RECONSIDER THE VALUE OF MANDATING DISCLOSURE OF SCOPE 3 GHG EMISSIONS

TEP recommends the Commission reconsider mandating disclosure of Scope 3 GHG emissions. Should the Commission maintain a disclosure requirement for Scope 3 GHG emissions, we urge the SEC to delay implementation in a final rule and work with stakeholders to articulate specific and reasonable guidance on which Scope 3 GHG emissions should be mandated.

TEP asks the Commission to reconsider the value disclosure of Scope 3 GHG emissions would provide to investors in making their investment decisions. Scope 3 GHG emissions are another entity's Scope 1 GHG emissions. Including a Scope 3 reporting requirement creates the potential for double and sometimes triple counting of the same emissions by different companies. In addition, electric utilities have little control over many Scope 3 GHG emission sources and Scope 3 emissions are difficult to estimate with accuracy compared to other information included in SEC reports. Scope 3 GHG emissions are likely to be less reliable, lacking comparability across companies, and would potentially undermine investor confidence in the overall accuracy and precision of other SEC reported data.

Obtaining information from upstream vendors and downstream users will be challenging, at best. A case in point is the effort to obtain accurate information from upstream vendors with respect to conflict minerals.³ Further exacerbating the challenges is timing. Information may not be timely available from sources outside the reporting company. This will add to the need for estimates, which brings into question the usefulness of such data.

If Scope 3 reporting is to be included in a final rule, TEP support a deferred implementation of such reporting for at least two years to allow time to address the inevitable logistical obstacles associated with such disclosures. TEP also submits that only those Scope 3 GHG emissions directly associated with the issuer company's business should be included (i.e., immediate customers). In the case of electric utilities this should be limited to purchased power distributed to customers. Finally, we reiterate the above recommendation for Scope 3 GHG emissions to be furnished in a separate report, rather than filed with the Commission.

³ 17 CFR 240.13p-1 Requirement of report regarding disclosure of registrant's supply chain information regarding conflict minerals

CONCLUSION

In the “Principles for effective disclosure,” TCFD recommends clear, balanced, and understandable disclosure.⁴ To achieve this end, the disclosure mandate must *also* be clear, balanced, and understandable. For the reasons presented above, TEP encourages the SEC to revise the Proposed Rule to seek a more fair and balanced presentation of information from registrants that is understandable and useful to investors. Clear and straightforward regulation will also allow TEP to protect customers from the threat of increased regulatory risk, cost, and burden. Thank you, again, for the opportunity to provide feedback on the Proposed Rule.

Sincerely,

Frank P. Marino

Frank P. Marino (Jun 16, 2022 09:58 PDT)

Frank P. Marino
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Tucson Electric Power Company

⁴ See <https://www.fsb-tcfd.org/recommendations/#principles-for-effective-disclosure>.